

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

| | | |
|---------------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on |) | |
| Universal Service |) | CC Docket No. 96-45 |
| |) | |
| Petition by N.E. Colorado Cellular, |) | DA 06-117 |
| Inc. d/b/a Viaero Wireless |) | |
| For Commission Agreement in |) | |
| Redefining the Service Areas of Rural |) | |
| Telephone Companies in the |) | |
| State of Nebraska Pursuant |) | |
| To 47 C.F.R. Section 54.207(c) |) | |

**REPLY COMMENTS OF N.E. COLORADO
CELLULAR, INC. D/B/A VIAERO WIRELESS**

N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless ("Viaero"), by its attorneys, hereby submits these Reply Comments pursuant to the schedule set forth in the Commission's *Public Notice*.¹

I. INTRODUCTION

In its Petition, Viaero requested the FCC's concurrence with the proposal by the Nebraska Public Service Commission ("NPSC") to redefine the service areas of several rural ILECs in Nebraska such that each wire center of the affected ILECs is reclassified as a separate service area.² Viaero's Petition demonstrated that redefining rural ILEC service areas in this

¹ *Public Notice*, "The Wireline Competition Bureau Seeks Comment on a Petition to Redefine Certain Service Areas of Rural Telephone Companies in the State of Nebraska," CC Docket No. 96-45, DA 06-117 (rel. Jan. 20, 2006) ("*Public Notice*").

² *See* Petition for Commission Agreement in Redefining the Service Areas of Rural Telephone Companies in Nebraska, CC Docket No. 96-45 (filed Dec. 27, 2005) ("Petition") at pp. 1-2

manner is necessary to fulfill the intent of the NPSC, which found Viaero's designation throughout its requested ETC service area to be in the public interest.³ Viaero also demonstrated that the proposed redefinition fully takes into account the recommendations of the Federal-State Joint Board on Universal Service, as required by 47 U.S.C. § 214(e)(5).⁴ This showing included an analysis of relative population densities demonstrating that no cream-skimming will result from the proposed redefinition.⁵ In short, the Petition and the NPSC's order attached to the Petition left no doubt that the NPSC's public interest analysis and ETC service area definition were fully consistent with the FCC's *Virginia Cellular* and *Highland Cellular* decisions, as well as the March 17, 2005, *ETC Report and Order*.⁶

In response to the Commission's *Public Notice*, no party objected to the proposed redefinition or questioned the sufficiency of the Petition under the Commission's rules and policies. Instead, the only comments, submitted jointly by the Nebraska Rural Independent Companies ("Nebraska Companies"), contained a collection of non-issues, including a suggestion that the Commission should "acknowledge" the "proper retention of jurisdiction over Viaero by the [NPSC] as an additional ETC" and the "limited nature" of the proposed redefinition. The Commission should reject the Nebraska Companies' request for action as unnecessary and unwarranted, and permit the requested redefinition to take effect without further action.

³ See *id.* at p. 8

⁴ See *id.* at pp. 8-13

⁵ See *id.* at pp. 10-11.

⁶ *Virginia Cellular, LLC*, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*"); *Highland Cellular, Inc.*, 19 FCC Rcd 6422 (2004) ("*Highland Cellular*"); *Federal-State Joint Board on Universal Service, Report and Order*, 20 FCC Rcd 6371 (2005) ("*ETC Report and Order*")

II. REPLY TO THE NEBRASKA COMPANIES' COMMENTS

A. There is No Need for the Commission to “Acknowledge” Anything in Writing.

The Nebraska Companies ask for the Commission to take action that is not necessary or warranted under the Commission's rules. Specifically, the Nebraska Companies request that, “should the Commission find that the Viaero Petition is consistent with Section 54.207(c) of the Commission's Rules (*see* 47 C.F.R. § 54.207(c)),” the Commission “ensure that its conclusions properly reflect the limited nature of Viaero's request and the proper retention of jurisdiction over Viaero” by the NPSC.⁷

According to the plain language of the cited rule, there is no basis or need for the action requested by the Nebraska Companies. Specifically, in the event the Commission concludes that the proposed redefinition satisfies the requirements set forth in Section 54.207(c) of the Commission's Rules, approval of the proposed redefinition is accomplished *automatically* upon the expiration of the 90-day period following the *Public Notice*. *See* 47 C.F.R. § 54.207(c)(3)(ii). No findings, conclusions, acknowledgments, or any other writings are provided for in the process that gives effect to a redefinition proposal.

No party has suggested that Viaero's Petition or the NPSC's proposed redefinition fails to satisfy Section 54.207(c)(1). Moreover, as discussed below, there is no need for a written clarification, notwithstanding attempts by the Nebraska Companies to sow “confusion.” Accordingly, the proper result under the Commission's Rules is for the proposed redefinition to take effect automatically.

⁷ Nebraska Companies' Comments at pp 1-2.

B. There is No “Confusion” About the Scope of the Proposed Redefinition.

The Nebraska Companies incorrectly suggest that the scope of the proposed redefinition needs clarification because of the possibility of “confusion” about the effect on rural ILEC study areas and “obligations.” In particular, the Nebraska Companies imply that the proposed redefinition should not affect the way that each Nebraska Company’s study area is “used for purposes of its and any other ETC universal service disbursements.”⁸

Nothing in Viaero’s Petition suggests that the proposed redefinition will affect the manner in which support is disbursed to the Nebraska Companies or other ETCs. Indeed, Viaero’s Petition stated that:

Defining the service area in this manner will in no way impact the way the affected rural ILECs calculate their costs, but is solely to enable Viaero to begin receiving high-cost support in those areas in the same manner as the ILECs. Rural ILECs may continue to calculate costs and submit data for purposes of collecting high-cost support in the same manner as they do now.⁹

The Commission reached similar conclusions in its order designating *Virginia Cellular* as an ETC.¹⁰ There been no suggestion that redefinition would affect support to ILECs or otherwise be inconsistent with longstanding FCC precedent that redefinition of service areas has nothing to do with how support is provided to ILECs.

The manner of calculating and disbursing support is not determined by the redefinition process, but by other portions of the Commission’s Rules – for example, the rules governing the disaggregation and targeting of support. *See* 47 C.F.R. § 54.315. Some Nebraska Companies

⁸ *Id.* at p. 2

⁹ Petition at p. 12.

¹⁰ *Virginia Cellular, supra*, 19 FCC Rcd at 1583 (“Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules ”)

have already taken advantage of the FCC's disaggregation rules, and have moved high-cost support out to high-cost wire centers. Redefinition will not affect those disaggregation plans. For those Nebraska Companies that declined to disaggregate support below the study-area level, redefinition will not compel them to use something other than the study area as the basis for calculating and receiving support. Any Nebraska Company that feels its disaggregation plan requires modification is free to propose a new plan to the NPSC at any time.

Accordingly, it is clear from the Commission's Rules and Viaero's Petition that ILECs' obligations will be unaffected, a point that needs no clarification.

C. The Commission Does Not Need to "Acknowledge" the NPSC's Continuing Jurisdiction Over Viaero or Any Other ETC.

The Nebraska Companies request that the Commission "acknowledge" the NPSC's ongoing jurisdiction over Viaero in a way that "reflects the proper oversight reflected in the Order."¹¹ We do not see how any such "acknowledgment" is necessary. Nothing in the service area redefinition process affects a state commission's jurisdiction over any carrier. According to the Act, a state commission has jurisdiction over a carrier's request for ETC status unless it makes an "affirmative statement" that it lacks jurisdiction to perform the designation, in which case the FCC assumes jurisdiction and considers the petition under Section 214(e)(6) of the Act.¹² No such statement was made, and the NPSC performed the designation pursuant to its jurisdiction under Section 214(e)(2) of the Act. At no point during or after the designation proceeding did the NPSC relinquish its authority to grant ETC status or to oversee Viaero's

¹¹ Nebraska Companies' Comments at p. 3

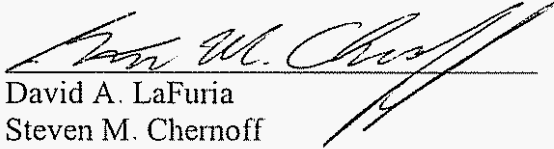
¹² *Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12264 (2000).

compliance with all applicable ETC requirements.¹³ There is simply no need to make a pronouncement on this point.

III. CONCLUSION

Viaero's Petition fully satisfies the FCC's rules and policies regarding service area redefinition. The relief proposed herein is exactly the same in all material respects as that granted by the FCC and state commissions to numerous other carriers throughout the country, and the FCC is well within its authority to grant its prompt concurrence. No party has challenged the analysis presented in the Petition, or even alleged that it does not satisfy the Commission's rules. Rather, the only comments were by companies asserting the possibility of confusion over issues that are covered clearly and in their entirety by the Petition and the FCC's rules and orders. Far from generating "confusion," Viaero's proposed redefinition is clearly delineated in the Petition, and no clarification or written acknowledgment is warranted. Accordingly, Viaero requests that the Commission allow the proposed redefinition to take effect without further action.

Respectfully submitted,



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February 21, 2006

¹³ See In the Matter of the Commission, on its own motion, seeking to amend Title 291, Chapter 5, Telecommunications Rules and Regulations, to add rules for designating eligible telecommunications carriers in Nebraska for the purpose of receiving federal universal service support, Certificate of Adoption (NPSC, Sept 21, 2005) (adopting as rules, with minimal modification, the FCC's guidelines applicable to the designation and recertification of ETCs, including wireless ETCs).

CERTIFICATE OF SERVICE

I, Donna L. Brown, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 21st day of February, 2006, sent a copy of the foregoing **Reply Comments of N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless** via e-mail to:

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